

REMARKS

This Amendment after Final is submitted in response to a Final Office Action of June 9, 2006 wherein claims 1-17 were allowed and claims 18-18 were rejected under 35 USC 103(a) as being unpatentable over US patent No. 6006091 to Lupien in view of US Patent No. 659721 to Thandu. The Examiner repeated the same rejection from the previous OA of January 4, 2006. Claim 19 was rejected under 35 U.S.C. 103(a) as being unpatentable over Lupien, Thandu, and further in view of U.S. Publication No. 2003/0100291 A 1 by Krishnarajah et al. No arguments are provided regarding rejected claim 20.

\*\*\*

In the Amendment B, various of the original claims are changed in ways believed related only to matters of form and for the purpose of clarification of claims without adding any new matter in the claims. Reference numerals/labels are removed from the claims, which change does not affect the scope of the claims per MPEP § 608.01(m) (the use of reference characters is considered as having no effect on the scope of the claims). The claims are amended to remove "step of" language. Also preambles of claims 1 and 18 are moved into the body of the claims.

Moreover, new network claims 21-23, network means-plus-function claims 24 and 25, and computer program product claim 26 and are added. These new claims have a similar scope as the corresponding method and system claims and are supported by the specification. The new claims do not add new matter and should be allowed as

long as claims 1-20 are allowed. The introduction of new claims is based in a verbal permission by the Examining Supervisor Nick Corsaro.

\*\*\*

During a subsequent telephone interview on July 18, 2006 with Examiners Nick Corsaro and Emem Ekong, the Applicant stated that independent claims 1 and 18 represent different categories but are similar in scope. The rejection of claim 18-20 seems to be unjustified because claim 1 is allowed and claim 18 is rejected, whereas the grounds for rejection of claims 1 and 18 are the same (see Office actions of January 4, 2006). The Examiners did not object to these arguments. However the question of using functional language in claim 18 was brought up by Nick Corsaro. During the phone interview the Applicant stated the functional language is allowed and is not objectionable as long as it avoids the problem of undue breadth and vagueness. The Examiners did not object to that.

MPEP Section 2173.05(g) states that "A functional limitation is an attempt to define something by what it does, rather than by what it is (e.g., as evidenced by its specific structure or specific ingredients). There is nothing inherently wrong with defining some part of the invention in functional terms. Functional language does not, in and of itself, render a claim improper." It is stated in *In re Swinehart*, 439 F.2d 210, 169 UPSQ 226 (CCPA 1971) that"

"Concern over use of functional language at "point of novelty" stems largely from fear that applicant will attempt to distinguish over reference by emphasizing property or function not mentioned in reference and thereby assert that his claimed subject matter is novel; such a

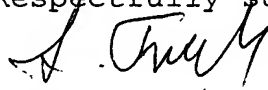
concern is irrelevant and misplaced; mere recitation of newly discovered function or property, inherently possessed by things in prior art, does not cause claim drawn to those things to distinguish over prior art; additionally, where Patent Office has reason to believe that functional limitation asserted to be critical for establishing novelty in claimed subject matter may, in fact, be an inherent characteristic of prior art, it possesses authority to require applicant to prove that subject matter shown to be in prior art does not possess characteristic relied on."

Claim 18 is amended to further clarify and to line up its scope with the scope of the allowed claim 1. In this amended form, claim 18 possesses all novel features of the allowed claim 1, therefore, it should be allowed as well.

\*\*\*

The rejections and objections of the Official Action of June 9, 2006 having been obviated by Amendment or shown to be inapplicable, withdrawal thereof is requested, and passage of the claims to issue is earnestly solicited.

Respectfully submitted,



Anatoly Frenkel

Agent for the Applicant

Registration No. 54,106

mef

July 24, 2006

Ware, Fressola, Van Der Sluys & Adolphson LLP

755 Main Street, P.O. Box 224

Monroe, CT 06468

(203) 261-1234